

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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T.R.A. DOCKET ROOM

IN RE:

PETITION OF KING'S CHAPEL)
CAPACITY, LLC FOR CERTIFICATE OF)
CONVENIENCE AND NECESSITY TO)
SERVE AN AREA IN WILLIAMSON)
COUNTY, TENNESSEE KNOWN AS)
ASHBY COMMUNITY)

DOCKET NO. 04-00335

RESPONSE OF KING'S CHAPEL CAPACITY, LLC
TO MOTION TO HOLD PROCEEDINGS IN ABEYANCE

COMES NOW King's Chapel Capacity, LLC ("KCC"), by and through undersigned counsel of record, and submits the following Response to the Motion to Hold Proceedings in Abeyance filed by Tennessee Wastewater Systems, Inc. ("TWS")

I. STATEMENT OF THE CASE

Currently, before this Authority is the Petition for a Certificate of Convenience and Necessity ("CCN") filed by KCC to provide wastewater services to the area known as the Ashby Community in Williamson County, Tennessee, specifically the Meadowbrook of King's Chapel Subdivision (hereinafter referred to as the "Subdivision"). In response to KCC's Petition, TWS filed a Petition to Intervene claiming that it already had a CCN to serve the same community and claiming ownership to the wastewater facility. Further confusing the situation, TWS subsequently filed breach of contract and civil conspiracy claims against the principals of KCC in the Williamson County Chancery Court requesting injunctive relief, declaratory relief, and monetary damages; claims asserted with facts and circumstances which allegedly

occurred during construction of the King's Chapel wastewater treatment system.¹ The TWS Motion was filed to hold these proceedings in abeyance before the TRA until the Chancery Court makes a final determination on the breach of contract claim and any liquidated damages.

The evidence offered by TWS in support of its Motion is an attempt to shift the focus of this proceeding and to confuse the only issue before the TRA which is to determine whether KCC is an appropriate and qualified entity to serve as the provider of wastewater services in the Subdivision. There is no strategy by KCC to obtain a wastewater treatment facility without paying fair compensation. In fact, KCC has paid monies for the construction of the partially completed facility to serve the Subdivision, as noted in the Motion at page 3, footnote 4, and submits that any issues regarding the sufficiency of those payments for construction of the facility are properly before the Williamson County Chancery Court.²

As owner of all of the real property in the subdivision in question, the developers through KCC have applied for a CCN to provide wastewater services from a facility that it has paid to have constructed; the final amount of said payment to be determined by order of a state court. Without any proof of ownership of or title to the partially constructed facility, other than a claim of breach of contract based on a forged document, TWS is simply manipulating the circumstances to maintain a status of a monopoly provider of wastewater services in its previously designated service area in Williamson County. The sole issue before the TRA is whether KCC should be granted a CCN to

¹ Chancery Court for Williamson County at Franklin, Case No. 31074. The Defendants have filed responsive pleadings in this docket including an Amended Motion to Dismiss and Memorandum of Law, a copy of which is attached hereto as Exhibit 1.

² Construction of the waste water treatment system is approximately forty percent (40%) complete as of December 8, 2004.

provide wastewater services from the facility located on property owned by its principals. Any issues relating to breach of contract and any damages resulting thereof are rightly before the Williamson County Chancery Court and should have no effect on these proceedings.

II. ARGUMENT

A. FACTS

King's Chapel Capacity, LLC is owned by Charles Pinson, John Powell, and Elaine Powell. These individuals also were the developers of the Subdivision. Although this area is within the service area of a blanket CCN granted to TWS to serve a portion of Williamson County, TWS neither owns nor operates any facility capable of serving the Subdivision. The developers began negotiating a contract with TWS (f/k/a On-Site Systems, Inc.) through its Vice-President Robert Pickney to construct a sewer facility in the Subdivision. During this time, the developers paid in excess of \$250,000 to TWS for construction of the facility. However, the parties did not reach final agreement and a construction contract was never executed. To make matters far worse, the contract on which the Chancery Court suit relies and which was previously submitted to the TRA is a forgery as evident from the Affidavit of John Powell with exhibits, attached hereto as Exhibit 2 and incorporated herein by reference. The contract submitted to the TRA and to the Williamson County Chancery Court was signed by Robert Pickney of TWS on October 3, 2003 and was allegedly signed by Mr. Powell on November 8, 2003. However, the affidavit and attached exhibits demonstrate that negotiations were ongoing after the documents were allegedly signed by Mr. Powell and that the parties hired an

attorney over four months later in February 2004 to memorialize such an agreement. Clearly, there is no valid or enforceable contract existing between the parties.

In the unlikely event, the contract is found not to be a forgery, the contract may, at best, only be construed as a construction contract not a provider contract as alleged by TWS. TWS has provided no proof to support its claim of an ownership interest in the wastewater sewer facility. TWS has offered no contract, agreement, or instrument of property conveyance to evidence a claim that it has any property or provider rights of any kind in the facility. The facts pertinent to this proceeding are clear, and this Authority should not delay its proceeding to wait for a ruling by the Williamson County Chancery Court to make a determination on any breach of contract claims which are irrelevant to a determination in this cause.

B. APPLICABLE LAW

Based on the Petition and proof presented to the TRA, there is no reason for sewer service to the Subdivision to be further delayed while the Chancery Court presides over a contract case based on a forged document or at best a construction contract. As referenced by TWS, Tenn. Code Ann. § 65-4-203(a) provides the following:

The authority shall not grant a certificate for a proposed route, plant, line, or system, or extension thereof, *which will be in competition with any other route, plant, line, or system*, unless it shall first determine that the facilities of the existing route, plant, line, or system are inadequate to meet the reasonable needs of the public, or the public utility operating the same refuses or neglects or is unable to or has refused or neglected, after reasonable opportunity after notice, to make such additions and extensions as may reasonably be required under the provisions of this part. (Emphasis added).

This statute does not apply to the facts in this case. This statute does not operate to prohibit competition between existing public utilities generally, but is specific to

competition between any existing routes, plants, lines or systems. TWS owns no route, plant, line, or system capable of serving the Subdivision. The types of wastewater treatment facilities such as the one constructed at the Subdivision are site specific and only capable of serving smaller, particularly defined areas such as subdivisions containing less than two hundred fifty (250) residential lots. TWS has offered no proof that it owns any route, plant, line, or system in competition with the facility at the Subdivision. Accordingly, the statute does not apply to this case, and therefore, it is unnecessary to move to the second prong of the statute to show TWS's refusal or neglect to offer adequate service. KCC does not have to prove that any system by TWS is inadequate to service the Subdivision.

Without any proof of ownership of the facility other than a pending breach of contract lawsuit based on a forged document, TWS is simply attempting to protect its service area in Williamson County. Holding this case in abeyance is not in the best interest of the public, especially those forty-eight (48) lot owners prevented from building homes pending a resolution of this proceeding. This entire subdivision cannot be served with sewer services until a CCN is granted. Further, no conveyances of any property in the Subdivision may be transferred to any other individual without there first being sewer service available to the subdivision.

Any determination of contract damages in the Chancery Court has no bearing on whether KCC is best suited to operate the wastewater facility that KCC paid to have built and currently owns. KCC maintains that TWS is merely attempting to prohibit the growth of competition among a limited number of privately owned public utilities throughout the state. The mission of the Tennessee Regulatory Authority is "to promote

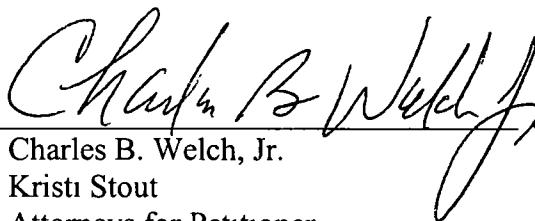
the public interest by balancing the interests of utility consumers and providers while facilitating the transition to a more competitive environment.” Allowing this proceeding to move forward is consistent with the mission statement of the Authority and should not be unreasonably delayed by an anticipated order of the Chancery Court in a lawsuit between the same parties based upon related, but not dependent issues.

III. CONCLUSION

For these reasons, the TRA should move forward on this application and deny the Motion to Hold the Proceeding in Abeyance.

Respectfully submitted,

FARRIS MATHEWS BRANAN
BOBANGO HELLEN & DUNLAP, PLC

A handwritten signature in cursive script, reading "Charles B. Welch, Jr.", written over a horizontal line.

Charles B. Welch, Jr.
Kristi Stout
Attorneys for Petitioner
618 Church Street, Suite 330
Nashville, TN 37219
(615) 726-1200

CERTIFICATE OF SERVICE

The undersigned hereby certified that the foregoing document has been served upon the following person/s by hand delivery or by United States Mail, with proper postage prepaid thereon:

Henry Walker, Esquire
Boult, Cummings, Conners & Berry, PLC
414 Union Street, Suite 1600
P.O. Box Nashville, Tennessee 37219

Richard Militana
Militana & Militana
5845 Old Highway 96
Franklin, Tennessee 37064

This 9th day of December, 2004.

Kristi Stout

Kristi Stout

EXHIBIT 1

AMENDED MOTION TO DISMISS
AND MEMORANDUM OF LAW

**IN THE CHANCERY COURT FOR WILLIAMSON COUNTY
AT FRANKLIN**

**TENNESSEE WASTEWATER SYSTEMS,
INC. f/k/a ON-SITE SYSTEMS, INC. and
ON-SITE CAPACITY DEVELOPMENT
COMPANY,**

Plaintiffs,

vs.

**J. POWELL DEVELOPMENT, LLC, JOHN
POWELL, ELAINE POWELL, C. WRIGHT
PINSON, ASHBY COMMUNITIES, LLC,
HANG ROCK, LLC, ARRINGTON
MEADOWS, LLC, and KINGS CHAPEL
CAPACITY, LLC,**

Defendants.

Case No.: 31074

AMENDED MOTION TO DISMISS AND MEMORANDUM OF LAW

COMES NOW the Defendants, by and through their undersigned attorneys, and requests that this Honorable Court grant the relief requested within this Amended Motion to Dismiss and Memorandum of Law and as grounds therefore state as follows

SUMMARY OF JURISDICTIONAL MATTERS

Count 1 Breach of Contract

a Agree that Court should retain jurisdiction of the construction contract attached to the Complaint to resolve issues of monies that may be still owed for construction, inspection, maintenance and repair of the wastewater facility

b This Court should dismiss this Count as to matters relating to the transfer of ownership of wastewater plant "property" as such jurisdiction is exclusive to the Tennessee Regulatory Authority, ("TRA") and Tennessee Department of Environment and Conservation ("TDEC"), before which this issue is now pending with all necessary parties already participating in those proceedings. Plaintiffs' filing herein is premature as Plaintiffs must first exhaust their ongoing administrative remedies before seeking relief from the proper Court.

TITLE 65 PUBLIC UTILITIES AND CARRIERS
CHAPTER 4 REGULATION OF PUBLIC UTILITIES BY
AUTHORITY PART 1 — GENERAL PROVISIONS

TCA §65-4-104. Authority's jurisdiction and control of public utilities.

The authority has general supervisory and regulatory power, jurisdiction, and control over all public utilities, and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter. However, such general supervisory and regulatory power and jurisdiction and control shall not apply to street railway

See also TCA § 4-5-314 which requires the TRA and TDEC, not the Chancery Court of Williamson County, to decide a contested case involving the wastewater plant, ownership and operation thereof and render a final order based exclusively upon the evidence of record in the adjudicative proceedings, not upon evidence deduced in the Chancery Court in Williamson County, to wit:

"(a) An agency with statutory authority to decide a contested case shall render a final order..."

(d) Findings of fact shall be based exclusively upon the evidence of record in the adjudicative proceeding and on matter officially noticed in that proceedings..."

Plaintiffs have failed to exhaust their administrative remedies in the following regards:

A current and contested administrative proceedings before ("TDEC") remains ongoing which involves directly and indirectly the Plaintiffs claims and matters to which Plaintiffs seek a ruling from this Court prior to the Administrative Determination by TDEC in direct violation of the doctrine of "Exhaustion of Administrative Remedies"

Count II – Civil Conspiracy

c Plaintiffs assert that that the submission of the application to the TRA by KCC in which it asserts ownership and control over the wastewater system was part of a wrongful and unlawful conspiracy (paragraph 36 of the complaint). Plaintiffs filing herein is premature as Plaintiffs must first exhaust their ongoing administrative remedies before seeking relief from the proper Court.

TITLE 65 PUBLIC UTILITIES AND CARRIERS CHAPTER 4 REGULATION OF PUBLIC UTILITIES BY AUTHORITY PART 1 — GENERAL PROVISIONS

TCA §65-4-104. Authority's jurisdiction and control of public utilities.

The authority has general supervisory and regulatory power, jurisdiction, and control over all public utilities, and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter. However,

such general supervisory and regulatory power and jurisdiction and control shall not apply to street railway

On Defendant, Kings Chapel Capacity, LLC (KCC) has properly applied to the Tennessee Regulatory Agency (TRA) for its own Certificate of Convenience and Need (CCN) concerning the property in question before this Court. Defendant TWS on October 11, 2004 filed a petition to intervene in KCC agencies proceeding by filing a Petition to Intervene, asserting that the TRA has the right to adjudicate matters relating too the CCN application between Defendant, KCC and Plaintiff TWS and TWS has an interest in the outcome of those administrative proceedings. TWS Petition to Intervene was granted by TRA and both KCC and TWS became part of the contested Administrative proceedings attending hearings and accepting a Scheduling Order from the Hearing Officer Thereafter, while both the TDEC and TRA proceedings were ongoing TWS filed this Chancery Court Proceedings seeking the Chancery Court to divest the TRA and TDEC of its statutory authority to rule upon such matters.

See also TCA § 4-5-314 which requires the TRA and TDEC , not the Chancery Court of Williamson County, to decide a contested case involving the wastewater plant, ownership and operation thereof and render a final order based exclusively upon the evidence of record in the adjudicative proceedings, not upon evidence deduced in the Chancery Court in Williamson County, to wit

“(a) An agency with statutory authority to decide a contested case shall render a final order...”

“(d) Findings of fact shall be based exclusively upon the evidence of record in the adjudicative proceeding and on matter officially noticed in that proceedings...”

Count III- Declaratory Judgment

d Plaintiffs improperly seek declaratory judgment in direct contradiction to TCA 4-5-225 (b) as set out in Image Outdoor Adv v. Csx Tr., M2000-03207-COA-R3-CV (Tenn App. 6-10-2003) Pursuant to Tennessee Supreme Court Rule 4(H)(1) the aforementioned case is offered for consideration as persuasive authority to this Court.

A declaratory judgment shall not be rendered concerning the validity or applicability of a statute, rule or order unless the complainant has petitioned the agency for a declaratory order and the agency has refused to issue a declaratory order.

The legislative intent that the UAPA apply to all administrative boards and agencies is unmistakably clear [fn4] United Inter-Mountain Tel Co v Public Service Comm, 555 S.W 2d 389 (Tenn. 1977) The UAPA sets out the statutory prerequisites for seeking review of an agency's actions through declaratory judgment proceedings Davis v. Sundquist, 947 S.W.2d 155,156 (Tenn Ct.App 1997) **A declaratory judgment action is premature if the petitioner proceeds directly to judicial review without seeking an administrative determination.** Id ; Hall v. McLesky, 83 S W 3d 752, 757 (Tenn Ct App 2002)

When a statute mandates an administrative remedy, one must exhaust this administrative remedy before seeking judicial relief. Pendleton v Mills, 73 S W.3d 115, 130-31 (Tenn Ct.App. 2002), Thomas v. State Bd of Equalization, 940 S.W 2d 563, 566 (Tenn. 1997). **In the instant case, Image was first required to seek a declaratory order,[fn5] and its failure to do so precluded the judicial relief it sought.**

See also TCA § 4-5-314 which requires the TRA and TDEC , not the Chancery Court of Williamson County, to decide a contested case involving the wastewater plant, ownership and operation thereof and render a final order based exclusively upon the evidence of record in the adjudicative proceedings, not upon evidence deduced in the Chancery Court in Williamson County, to wit:

“(a) An agency with statutory authority to decide a contested case shall render a final order...”

(d) Findings of fact shall be based exclusively upon the evidence of record in the adjudicative proceeding and on matter officially noticed in that proceedings..."

Count IV- Injunctive Relief

e. Should be dismissed as matter is already before the appropriate administrative agency. Plaintiffs filing herein is therefore premature as Plaintiffs must first exhaust their ongoing administrative remedies before seeking relief from the proper Court

TITLE 65 PUBLIC UTILITIES AND CARRIERS
CHAPTER 4 REGULATION OF PUBLIC UTILITIES BY
AUTHORITY PART 1 — GENERAL PROVISIONS

TCA §65-4-104. Authority's jurisdiction and control of public utilities.

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“(a) An agency with statutory authority to decide a contested case shall render a final order...”

(d) Findings of fact shall be based exclusively upon the evidence of record in the adjudicative proceeding and on matter officially noticed in that proceedings...”

Wherefore, Defendants respectfully requests that the Motion to Dismiss, for the reasons aforementioned, be granted to include such other relief as this Court may deem necessary and proper.

Respectfully Submitted.


F. Shayne Brasfield, BPR #019053
Brasfield & Milazo, PC
109 Cleburne Street
Franklin, TN 37064
(615) 599-7719

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via United States Mail, postage prepaid, to;

Jere N McCulloch, Esq.
109 Castle Heights Avenue North
Lebanon, TN 37087

and

Anne C. Martin, Esq.
Kenneth M. Larish, Esq
511 Union Street, Suite 1600
Nashville, TN 37219

On this 8th day of December, 2004.


F. Shayne Brasfield

EXHIBIT 2

AFFIDAVIT OF JOHN POWELL
AND SUPPORTING EXHIBITS

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

December 8th, 2004

***IN RE: Petition of King's Chapel Capacity) Docket No.: 04-00335
LLC for Certificate of Convenience and)
Necessity to Serve an Area in Williamson,)
County, Tennessee, Known as Ashby)
Community.)***

AFFIDAVIT OF JOHN POWELL

The Affiant, John Powell, after having been duly sworn states follows:

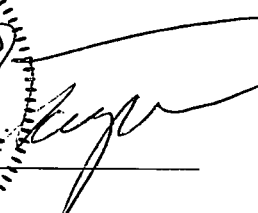
1. I have personal knowledge concerning the facts contained herein.
2. The construction contract which bears my signature placed into the record by Tennessee Wastewater System, Inc., is a forgery and was materially altered without my knowledge or consent.
3. Robert Pickney and I tried to draft a construction contract which would be acceptable to both of us but could not reach an agreement. We ultimately agreed to engage the services of Nick Romer, an attorney, to assist in our negotiations and drafting. The meeting between myself, Robert Pickney and Mr. Romer has been memorialized by Affidavit of Nick Romer attached hereto.
4. Also attached hereto are other documents provided by Charles Pickney which further evidence that no contract ever existed and that the one provided by the Pickneys is a forgery.

John Powell

SS

personally known to me by identification of record.

My Commission Expires. 1-29-05



AFFIDAVIT

OF

NICHOLAS M. ROMER

I, Nicholas M. Romer, being first duly sworn, have personal knowledge concerning the facts contained herein and do swear as follows:

1. I am an attorney licensed to practice law in Tennessee and reside in Williamson County, Tennessee. I have represented John Powell and business entities with which he is associated.
2. At the request of John Powell, I attended a meeting on April 7, 2004 at Mr. Powell's residence with John Powell and Robert Pickney to acquaint myself with the projected business relationship between Mr. Pickney and Mr. Powell and/or their representative entities then existing or to be formed.
3. At the subject meeting Mr. Pickney represented himself and/or his company Onsite Systems, Inc. to be licensed or chartered as a public utility and in some way empowered by a governing Tennessee regulatory authority to have exclusive right to operate a wastewater treatment facility within a geographic area in which Mr. Powell or his entities owned real property. Mr. Pickney also represented that Onsite Capacity Development Company was a licensed contractor also empowered by Tennessee regulatory authority to build wastewater treatment facilities. Based upon Mr. Pickney's representations, I concluded that Mr. Powell, or his existing or proposed entities, had no alternative but to enter into an agreement with Mr. Pickney and his companies if Mr. Powell intended to have wastewater treatment for real property Mr. Powell or his entities owned.
4. At the April 7, 2004 meeting John Powell and Robert Pickney represented to me that there existed no prior agreement, written or otherwise, respecting any matter between Robert Pickney, or any of the entities with which he was associated, and John Powell, or any of the entities with which John Powell was associated.
5. The charge Mr. Powell gave me at the subject meeting was to draft a first-time agreement between Mr. Pickney and Mr. Powell, or their representative entities, concerning the ownership and operation of a wastewater treatment facility in Williamson County. To assist in that task I was furnished a document entitled "SEWER CONTRACT

FOR CLAY ESTATES SUBDIVISION” to be used as a reference document for drafting the proposed agreement. The document referred to Mr. Pickney’s company as a “Utility.”

6. The parties to the proposed agreement had not yet been determined by the end of the meeting. Mr. Pickney presented to me a business card carrying the business name Tennessee Wastewater, a business name without designation as to the nature of the entity, i.e. “Inc.” or “LLC.” When I pointed this out to Mr. Pickney he announced that the entity was a Tennessee corporation. At the time the other party to the agreement was also not confirmed since John Powell intended to form a separate legal entity to be party to the agreement. I recommended that the name “ABC, LLC” be used temporarily in the draft of the proposed agreement until Mr. Powell could form a separate Tennessee entity.

7. On April 12, 2004 I began drafting a proposed agreement between Mr. Pickney’s company, Tennessee Wastewater Systems, Inc., and an entity to be formed by John Powell.

8. On April 13, 2004 I emailed to John Powell a draft of the proposed agreement between Tennessee Wastewater Systems, Inc. and ABC, LLC, a fictitious entity, and as of the date of this affidavit I have not made any changes to the draft agreement.

9. On October 20, 2004, John Powell presented me with a document titled “SEWER CONTRACT FOR MEADOWBROOK SUBDIVISION,” a document apparently alleged by Mr. Pickney to be an enforceable agreement. The document is attached to this affidavit. The alleged agreement includes among its parties Onsite Systems, Inc, and Onsite Capacity Development Company, respectively characterized as a “Utility” and as a “Contractor.”

10. On October 20, 2004, John Powell presented me with two executed statements from the Board For Licensing Contractors, Department of Commerce, State of Tennessee. The two statements are attached to this affidavit. One statement attests that as of September 7, 2004, On Site Systems Inc. and Tennessee Wastewater Systems Inc were not licensed contractors within the State of Tennessee. A second statement attests that as of September 1, 2004, Onsite Capacity Development Company was not a licensed contractor within the State of Tennessee.

11. Title 62, Chapter 6, Part 1, Section 2 of the Tennessee Code Annotated, as amended to Section 62-6-136(a), states that “It is unlawful for any person, firm, or corporation to represent itself as a licensed contractor, or to act in the capacity of a “contractor...while not licensed....”

12. It is the Affiant's opinion that, presuming Onsite Systems, Inc. and Onsite Capacity Development Company (and Tennessee Wastewater Systems, Inc.) were not licensed contractors in Tennessee, and given that conducting business as a contractor without being licensed is illegal in Tennessee, any alleged agreement executed by Onsite Systems, Inc., Onsite Capacity Development Company, or Tennessee Wastewater Systems, Inc. are voidable by an aggrieved party to the agreement.

FURTHER YOUR AFFIANT SAYETH NOT

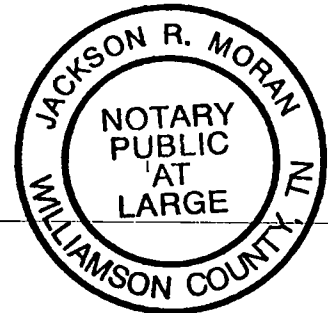
Nicholas M. Romer
Nicholas M. Romer, Affiant

I HEREBY CERTIFY THAT ON THIS DAY, before me, an officer duly authorized in Tennessee and in Williamson County to take acknowledgments, personally appeared, and having first been duly sworn, Nicholas M. Romer, to me known to be the person described in and who executed the foregoing Affidavit, and he acknowledged before me that he executed the same and has sworn to its contents.

WITNESS MY HAND AND OFFICIAL SEAL in Williamson County, Tennessee this 21 day of October, 2004.

My commission expires: Oct 28, 2007

Jackson R. Moran
Notary Public



Original Contract

Presented with OCDC Professional Service Agreement

June 10, 2003

Total Consideration

DDR		\$30,000
Per lot fees	215 x \$6,000 =	<u>1,290,000</u>
	Total	1,320,000

Utility Company is responsible for all bonding costs

Payment Terms

DDR – 15,000 – due at signing

15,000 – due when report is approved by Williamson County Planning Commission

No Phasing

Half of tap fees are due at contract signing \$660,000

Half of tap fees are due when the state of Tennessee approves the construction of the treatment and disposal system \$660,000

If Developer phases payments

Minimum – 50% total due at signing = \$645,000

After the 107½th Lot is platted \$6,000 per lot will be due at plat signing for all remaining lots plus ½% per month additional charge for each month that has passed between contract signing and the lots being platted

If original contract is used and signed immediately

OCDC has agreed that any payment toward the \$30,000 fee for the DDR will be used to reduce the amount due at signing and the overall amount due will be reduced by the \$30,000 (DDR fee waived)

Amount due at signing $(\frac{1}{2}) \times (\$1,290,000) = \$660,000$

Less payments previously made

15,000 – for DDR

250,000 – for construction progress payment

265,000 – total payments credited

Balance due \$395,000

Additional payments of \$660,000 plus any applicable interest will be made per the contract, as future phases are platted

October 31st Optional Contract

Contract offered October 31, 2003

Developer will be responsible for all bonding costs

No payment is due at contract signing

Developer will pay \$600,000 during construction of sand filter and drip irrigation systems with progress payments being made as construction is completed

The amount due at completion of construction is \$600,000

Developer will make additional payments of \$1,850 per lot before each phase is platted

Future payments

$$\$215 \times 1,850 = \$397,750$$

$$\text{Total Payment} = \$997,750$$

If October 31st contract is signed immediately

OCDC has agreed that any payment toward the \$30,000 fee for the DDR will be used to reduce the amount due at signing (DDR fee waived)

Construction of sand filter and drip irrigation system is complete – construction of the storage pond remains to be done The amount to be paid for completed construction is \$550,000

Amount to be paid for remaining work \$50,000

The amount currently due on completed construction $\$550,000 - (250,000 + 15,000)$
 $550,000 - 265,000 = \$285,000$

Developer will pay \$1,850 per lot before each phase is recorded

Future Payments

\$50,000 when the storage pond construction is complete

$$\$215 \times \$1,850 \text{ per lot} = \$397,750$$

$$\text{Total payment} = \$997,750$$

STEPS REQUIRED PRIOR TO PLAT SIGNING

- 1. Execution of contract with Tennessee Wastewater Systems and On-Site Capacity Development Company.**
- 2. Pay On-Site Capacity Development Company the balance remaining on the contract.**
- 3. Either complete construction of Phase I collection lines or bond the construction cost (\$239,894)**
- 4. Pay On-Site Capacity Development Company per lot fee for 48 lots .**

By signatures below, the parties agree that the above steps have been reviewed on this _____ day of July, 2004.

John Powell

Charles Pickney, Jr.